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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,296	07/01/2003	Sarah Rose Hertel	125736	5583
7590	01/26/2006		EXAMINER	
Dean D. Small Armstrong Teasdale LLP Suite 2600 One Metropolitan Square St. Louis, MO 63102			KISH, JAMES M	
			ART UNIT	PAPER NUMBER
			3737	
DATE MAILED: 01/26/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/611,296	Applicant(s) HERTEL ET AL.	
	Examiner James Kish	Art Unit 3737	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☐ Responsive to communication(s) filed on ____.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-25 is/are pending in the application.

 4a) Of the above claim(s) ____ is/are withdrawn from consideration.

5) ☐ Claim(s) ____ is/are allowed.

6) ☒ Claim(s) 1-25 is/are rejected.

7) ☒ Claim(s) 7 is/are objected to.

8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on 6/8/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:

 1. ☐ Certified copies of the priority documents have been received.

 2. ☐ Certified copies of the priority documents have been received in Application No. ____.

 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>7/1/03</u> .	6) <input type="checkbox"/> Other: ____.

DETAILED ACTION

Claim Objections

Claim 7 is objected to because of the following informalities:

"... of interest has a likilihood of being..." Should be spelled –likelihood-.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 19 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. A computer does not fall into any of the above-mentioned categories of statutory subject matter. An example of how to format this to allow review for allowance would be "A computer-readable medium programmed to..."

Claims 9 and 18 contain the trademark/trade name Advanced Lung Analysis.

Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods

themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a computer program and, accordingly, the identification/description is indefinite.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 5-6, 8, 10, 12, 14-15, 17, 19-20, 23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gagnon et al.'777 (US Patent No. 6,787,777) in view of Shao et al.'142 (US Patent No. 6,928,142). Gagnon et al.'777 discloses the use of positron emission tomography (PET) and single photon emission computed tomography (SPECT) (column 1, lines 10-15). Also disclosed is the knowledge that while SPECT provides structural data, which would be beneficial to use to localize a region of interest (ROI) for purposes of image registration with a PET, or function, image. It is stated as an example that in oncology, this could be used to assess lesion progression and treatment effectiveness (column 2, lines 33-49). However, Gagnon et al.'777 does not discuss how the selection process is performed. Shao et al.'142 teaches a computer workstation for controlling the imaging system (see Abstract). Via this computer, the operator manually selects a ROI of the subject on an X-ray image

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(column 7, lines 41-44). By manually selecting the ROI, this region is defined by having a particular area or volume. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the selection process taught by Shao et al.'142 in the registration discussed by Gagnon et al.'777 to provide an easy system with which the operator can select a ROI.

Claims 2, 4, 7, 11, 13, 16, 21-22, 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gagnon et al.'777 in view of Shao et al.'142, further in view of Townsend et al.'476 (US Patent No. 6,490,476). Gagnon et al.'777 teaches registering PET images with SPECT images in order to determine metabolic activity of abnormalities, such as lesions. Shao et al.'142 teaches manual selection of a ROI via a computer workstation. However, neither Shao nor Gagnon discuss an order of retrieving images. Townsend et al.'476 teaches the CT scan as being acquired before the PET scan, following a 60 minute uptake period (column 13, lines 19-21). Townsend also teaches scaling of the PET pixel values to display them with the same pixel size as the CT images (column 14, lines 10-12). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use this order of operation as taught by Townsend in acquiring the images for the registration of Shao and Gagnon to allow the operator to select the ROI on the CT scan, or first image.

With regard to claim 7, Townsend et al.'476 discloses a method of discrimination between relevant and irrelevant metabolic activity by PET-CT registration (column 3, lines 30-40).

With regard to claim 13, Townsend et al.'476 discloses a method of interpolating the lower resolution PET image on to the higher resolution CT image for image fusion (column 14, lines 20-25).

With regard to claim 24, see figure 10A, which a CT image of primary lung cancer.

Claims 9 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gagnon et al.'777 in view of Shao et al.'142, further in view of Ferrant et al.'762 (US Patent No. 6,597,762). Gagnon et al.'777 teaches registering PET images with SPECT images in order to determine metabolic activity of abnormalities, such as lesions. Shao et al.'142 teaches manual selection of a ROI via a computer workstation. However, neither Shao nor Gagnon discuss using a specific software tool, such as Advanced Lung Analysis, for determination purposes. Ferrant et al.'762 teaches the use of CT Advanced Lung Analysis for the automatic segmenting and sizing of lung lesions that have been identified by a radiologist (column 1, lines 12-18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize software for automatic segmenting and sizing to provide tremendous capability for radiologists to identify lesions in two or three dimensional views (column 1, lines 32-34).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Kish whose telephone number is 571-272-5554. The examiner can normally be reached on 8:30 - 5:00 ~ Mon. - Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JMK
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